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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,792	09/19/2003	Scott Thomas Mazar	279.B10US1	6737

21186 7590 12/09/2009
SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
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MINNEAPOLIS, MN 55402

EXAMINER

PAULS, JOHN A

ART UNIT	PAPER NUMBER
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3686

NOTIFICATION DATE	DELIVERY MODE
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12/09/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@slwip.com
request@slwip.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/665,792	Applicant(s) MAZAR ET AL.	
	Examiner JOHN A. PAULS	Art Unit 3686	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 112.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1,4-10,13-31,33-42,44-54 and 56-60.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/J. A. P./
Examiner, Art Unit 3686

/Jerry O'Connor/
SPE, GAU 3686

Continuation of 11. does NOT place the application in condition for allowance because: Applicants arguments have been considered but are not persuasive.

With respect to Claims 1, 33 and 34, Applicant argues that Leven fails to disclose an implantable device. Examiner respectfully disagrees. Leven paragraph 0008 discloses "medication pumps implanted subcutaneously" and paragraph 0025 discloses "sensors can be ... located subcutaneously". Therefore Leven clearly discloses an implantable device. Notwithstanding this interpretation of Leven, Examiner could rely on Kalgren (US PGPUB 2002/0077562 A1) to show that IMD's were known in the art.

Applicant argues that Leven fails to disclose a recognition module configured to authorize access to a person with the implantable medical device. Applicant argues that Leven discloses providing access to a third party, not the person implanted with the device. However, the claims language in claims 1 and 33 requires "access to the person implanted with the IMD". Leven provides for an authorized third party to "access a person implanted with in IMD". The claim language does not disclose "to authorize a person implanted with the IMD access to the publicly accessible portal". Furthermore, Leven discloses that the downloaded data can be access from a user's computer (paragraph 0036); from a web site (paragraph 0041) and that the user's computer can be a home computer (paragraph 0038 and Figure 2).

Applicant argues that Leven fails to disclose that the unique identifier is used to authorize a communication connection and/or access to the health monitoring system. Applicant appears to be arguing features that are not claimed. Claims 1 and 33 require that the recognition module: detect the IMD's proximity, identify the IMD and provide access, all of which are disclosed by Leven as cited.

With respect to Claims 33 and 34, Applicant further argues that Leven fails to disclose a publicly accessible terminal. Examiner respectfully disagrees. Leven in paragraph 0048 discloses that various establishments can be equipped with communications equipment which allows access to the health monitoring system. Clearly these establishments that a patient may visit while traveling are publicly accessible.